



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1323]

Certain Video Processing Devices and Products Containing the Same; Notice of Commission Decision to Review and, on Review, to Affirm with Modifications an Initial Determination Granting Summary Determination of Invalidity as to U.S. Patent 8,139,878 and to Take No Position as to U.S. Patent 7,769,238; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (“ID”) (Order No. 47) of the presiding Administrative Law Judge (“ALJ”) granting summary determination of invalidity based on obviousness-type double patenting. On review, the Commission affirms with modifications the ID’s finding that the asserted claims of U.S. Patent No. 8,139,878 (“the ’878 patent”) are invalid. The Commission takes no position as to the ID’s findings with respect to the ’238 patent, except to the extent those findings also support the ID’s invalidity findings with respect to the ’878 patent. Accordingly, the Commission terminates the investigation with a finding of no violation of section 337 of the Tariff Act of 1930, as amended (“section 337”). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can

be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 8, 2022, the Commission instituted this investigation under section 337 based on a complaint filed by VideoLabs, Inc. of Palo Alto, California ("Complainant" or "VideoLabs"). *See* 87 FR 48198-99 (Aug. 8, 2022). The complaint, as supplemented, alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video processing devices and products containing the same by reason of infringement of certain claims of U.S. Patents Nos. 7,769,238 ("the '238 patent"); 8,139,878 ("the '878 patent"); 7,372,452 ("the '452 patent"); and 8,208,542 ("the '542 patent"). *See id.* The complaint also alleged the existence of a domestic industry. *See id.* The notice of investigation named as respondents: (1) Acer Inc. of New Taipei City, Taiwan, and Acer America Corporation of San Jose, California (collectively, "Acer"); (2) ASUSTeK Computer Inc. of Taipei, Taiwan, and ASUS Computer International of Fremont, California (collectively, "ASUS"); (3) Motorola Mobility LLC of Chicago, Illinois, Lenovo Group Limited of Quarry Bay, Hong Kong S.A.R. of China, and Lenovo (United States) Inc. of Morrisville, North Carolina (collectively, "Lenovo"); and (4) Micro-Star International Co., Ltd. of New Taipei City, Taiwan, and MSI Computer Corp. of City of Industry, California (collectively, "MSI"). *See id.* The Office of Unfair Import Investigations ("OUII") is also named as a party in this investigation. *See id.*

Subsequently, the investigation was terminated in part as to the Acer respondents based on settlement. *See* Order No. 18 (Oct. 24, 2022), *unreviewed by* Comm'n Notice (Nov. 10, 2023). Likewise, the investigation was terminated in part as to the Lenovo respondents based on settlement. *See* Order No. 37 (Jan. 27, 2023), *unreviewed by* Comm'n Notice (Feb. 28, 2023). Furthermore, the investigation was terminated in part as to the MSI respondents based on settlement. *See* Order No. 38 (Feb. 7, 2023), *unreviewed by* Comm'n Notice (Mar. 7, 2023). The ASUS respondents remain in the investigation.

The Commission terminated the '452 and '542 patents based on the withdrawal of the complaint as to those patents. *See* Order No. 13 (Sept. 7, 2022), *unreviewed by* Comm'n Notice (Sept. 26, 2022); Order No. 40 (Feb. 15, 2023), *unreviewed by* Comm'n Notice (Mar. 22, 2023). Claim 1 of the '238 patent and claims 1-4 of the '878 patent remain asserted in this investigation.

On March 22, 2023, the ASUS respondents filed a corrected motion for summary determination of invalidity based on obviousness-type double patenting. On April 3, 2023, Complainant and OUII filed responses in opposition to the motion.

On May 1, 2023, the ALJ issued the subject ID (Order No. 47) granting the motion for summary determination that the asserted claims are invalid based on obviousness-type double patenting, thereby terminating the investigation in its entirety.

On May 11, 2023, Complainant filed a petition for Commission review of the subject ID. On May 18, 2023, the ASUS respondents and OUII filed responses to the petition. On May 23, 2023, Complainant filed a motion for leave to file a reply in support of its petition. On May 26 and 31, respectively, the ASUS respondents and OUII filed responses in opposition to Complainant's motion for leave to file a reply.

On July 10, 2023, Complainant filed a motion to terminate the investigation as to the '238 patent and a motion to supplement the record. On July 13, 2023, the ASUS respondents filed a response to Complainant's motion to supplement the record. No other responses were filed.

Having examined the record of this investigation, including the ID and the parties' submissions, the Commission has determined to review, and on review, to affirm the subject ID with modifications with respect to the '878 patent and to take no position with respect to the '238 patent. More specifically, as explained in the Commission Opinion issued concurrently herewith, the Commission has determined to affirm with modifications the ID's finding that the asserted claims of the '878 patent are invalid based on obviousness-type double patenting. The Commission takes no position as to the ID's findings with respect to the '238 patent, except to

the extent those findings also support the ID's invalidity findings with respect to the '878 patent. The Commission adopts all findings in the ID that are not inconsistent with the Commission's determination. The Commission has also determined to grant Complainant's motion for leave to file a reply solely to the extent that the reply addresses the ASUS respondents' and OUII's positions that Complainant has waived certain arguments made in its petition for review. The Commission has further determined to grant Complainant's motion to terminate the investigation as to the '238 patent and Complainant's motion to supplement the record.

Accordingly, the Commission terminates the investigation with a finding of no violation of section 337. The investigation is terminated.

The Commission's vote for this determination took place on August 1, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 1, 2023.

Lisa Barton,

Secretary to the Commission.

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